Rep. Albers Testimony on AJR 31
To the Assembly Committee on Elections & Constitutional Law
March 22, 2007

Members of the Committee, Assembly Joint Resolution 31 is a simple and straightforward constitutional amendment that would end the mandatory, or "unified," bar in Wisconsin and attorneys would not be compelled to pay dues to the State Bar or any other bar association.

Let me say from the start that I think the State Bar of Wisconsin does excellent work. The Bar provides valuable services, particularly in their various study committees and offerings of continuing legal education. The issue today should not be "The Bar does not do a good job" or "The Bar is not fulfilling its mission", but rather "Is it necessary for the Bar to be unified to fulfill its mission?" I believe that at this time the answer is, no.

As some of you may know, this is not a new debate. The Bar was first organized on a voluntary basis in 1878 and was only made mandatory by Supreme Court order in 1956. In 1988, however, a federal appeals court ruled that the mandatory bar was unconstitutional and the unified membership was suspended until that ruling was later overturned in 1991. Since then, Wisconsin has only known mandatory membership in the State Bar, whereas our neighboring states with the exception of Michigan are all voluntary.

The State Bar of Wisconsin believes that a mandatory bar is the best way to fulfill its mission in SCR 10.01(2), which is to "promote the public interest by maintaining high standards of conduct in the legal profession and to aid in the efficient administration of justice." Said another way, the Bar exists to regulate the

legal profession and improve the quality of legal services available to the people of this state.

The regulation of the legal profession already is, and can continue to be, done through the Office of Lawyer Regulation. This body handles ethics enforcement and lawyer discipline almost exclusively. In addition, the Board of Bar Examiners grants licenses to practice law in Wisconsin and monitors compliance for continuing legal education.

The State Bar complements these bodies in their functions, and does them well. However, I see no compelling reason why Bar membership must be mandatory as it goes about its complementary functions. In fact, Professor Ted Schneyer, an expert in the legal profession and a former instructor at the UW Law School, concluded that supporters of unified bars cannot point to any hard evidence that unified bars provide any better service than involuntary bars.

Professor Schneyer made that conclusion back in 1983. Today, supporters and opponents of mandatory bars may have more evidence to support their respective positions. That is why we are here today. I am well aware that this is a question that will not be resolved overnight, especially if history is any guide. However, I believe that it is time to restart the debate.

Thank you for your consideration. Questions?

ASSEMBLY COMMITTEE ON ELECTIONS AND CONSTITUTIONAL LAW

TESTIMONY OF ATTORNEY STEVEN LEVINE
IN SUPPORT OF AJR 31
PROHIBITING THE SUPREME COURT OF WISCONSIN
FROM REQUIRING ATTORNEYS TO JOIN A STATE BAR ASSOCIATION

My name is Steve Levine, an attorney residing in Madison, and President of the State Bar of Wisconsin. I am pleased and thankful to be able to testify in favor of AJR 31. I do so on my own behalf and not on behalf of the State Bar.

The Wisconsin Supreme Court requires every lawyer in Wisconsin to join and pay dues to the professional association known as the State Bar of Wisconsin. No other professional group in this state – doctors, nurses, engineers, architects, accountants, electricians, home builders, realtors, etc. – is legally required to join "their" professional association. While the State Bar of Wisconsin is an excellent association providing valuable resources for lawyers and for the state, its membership should be determined by its value and meaning to each lawyer in Wisconsin, making the decision whether to join for himself or herself. The supreme court should be prohibited from mandating State Bar membership, because:

The State Bar of Wisconsin does not meet the requirements set forth by the U.S. Supreme Court for a mandatory bar. In *Keller v. State Bar of California*, 496 U.S. 1, 13 (1990), the United States Supreme Court stated that mandatory membership in a state bar association and the payment of mandatory bar dues is justified by bar activities which meet two purposes: "regulating the legal profession and improving the quality of legal services." The State Bar of Wisconsin does not use mandatory dues for either purpose. It is entirely a professional association.

No State Bar dues are used for regulatory purposes. While most mandatory state bar associations around the country are the bodies which enforce codes of ethics and regulate the profession in their states, the State Bar of Wisconsin does not do so. In Wisconsin, the supreme court's Board of Bar Examiners (BBE) and Office of Lawyer Regulation (OLR) perform all regulatory functions. The BBE administers bar admission and continuing legal education requirements, while requirements of the Rules of Professional Conduct for Attorneys are enforced by the OLR. Both bodies are supported by assessments paid by all lawyers in Wisconsin in addition to State Bar dues, and a voluntary bar would have no impact on the regulation of lawyers in this state.

No State Bar dues are used to "improve the quality of legal services" offered by State Bar members. Improving the quality of legal services offered by members of the bar by providing quality educational programs is the second bar function cited by the U.S. Supreme Court to justify mandatory bar membership and the payment of mandatory bar dues. The State Bar of Wisconsin does offer such programs, but they are paid for by the

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MEMORANDUM

To: Assembly Committee on Elections and Constitutional Law

From: Atty. John Walsh, Chair
Legislative Oversight Committee
State Bar of Wisconsin

Date: March 22, 2007

Re: State Bar of Wisconsin opposition to AJR 31 (Mandatory Bar)

The State Bar of Wisconsin opposes Assembly Joint Resolution 31, which would amend the Wisconsin Constitution to prohibit the Wisconsin Supreme Court from requiring licensed attorneys to joint the State Bar of Wisconsin or pay dues to any bar association.

Like the vote two weeks ago to oppose AJR 30, the vote by the State Bar's Board of Governors to oppose this proposed constitutional amendment was also overwhelming, almost unanimous.

As with AJR 30 and the WisTAF assessment, the question of a mandatory bar falls squarely within the authority of the judicial branch of government to regulate the practice of law. In fact, it is fair to say that this proposal affects no one but lawyers, raising the question of whether it is appropriate to address this issue by amending our state constitution for the benefit of those State Bar members who object to mandatory bar membership, particularly when many other avenues exist for objecting members to seek change.

The question of a mandatory bar was litigated literally for decades until 1990, when the U.S. Supreme Court ruled in *Keller v. State Bar of California* that a mandatory bar association could use mandatory dues to fund activities that were germane to the goals of regulating the legal profession and providing or improving legal services, but not activities of an ideological nature unrelated to at least one of those two goals. After the *Keller* decision, the State Bar's Board of Governors voted to recommend to the Wisconsin Supreme Court that the State Bar of Wisconsin be a mandatory or integrated bar, and the Court ultimately adopted that position.

Under the *Keller* decision, mandatory state bar dues cannot be used for ideological activity that is unrelated to regulation of the practice of law or providing or improving legal services. The majority of lobbying activity engaged in by the State Bar is funded by voluntary section dues, not mandatory state bar dues. Further, using what is commonly known as the "*Keller* rebate," State Bar members can deduct the portion of their dues that pays for the Bar's legislative activity that is unrelated to regulating the practice of law or providing or improving legal services. If a member disputes that portion of his or her State Bar dues that is subject to the *Keller* rebate, the dispute can be submitted to arbitration.

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Therefore, under existing procedures, any objecting member of the State Bar of Wisconsin can prevent his or her dues from being used to pay for ideological activity that is unrelated to regulating the practice of law or providing or improving legal services. To avoid paying for lobbying activity engaged in by State Bar sections, members need only refrain from joining a section that has chosen to engage in lobbying.

Some will tell you that the State Bar of Wisconsin does not use mandatory State Bar dues for any purpose related to regulating the practice of law or providing or improving legal services. This is patently untrue. I will give you three brief and current examples. The Board of Governors recently approved the report of a State Bar study committee on the unauthorized practice of law and will be filing a petition with the Supreme Court to create a procedure for the regulation of nonlawyers who attempt to practice law. That is clearly related to the regulation of the practice of law. The Board of Governors is currently considering the report of its Access to Justice study committee, which studied the civil legal needs of the poor in Wisconsin. Clearly, this project is related to both the regulation of the practice of law and to improving legal services. Finally, our current President, Steven Levine, has himself established a State Bar study committee to examine whether or not the diploma privilege should be retained in Wisconsin. Again, this project is clearly related to the regulation of the practice of law.

I could give you many other examples of how mandatory State Bar dues are used for purposes related to either the regulation of the practice of law or for providing or improving legal services.

As with AJR 30, it is unnecessary and inappropriate to amend the state constitution for the benefit of such a small number of people. Any State Bar member who objects to mandatory bar membership is free to petition the Supreme Court (which has not addressed the issue of a mandatory Bar for 15 years, during which time the makeup of the court has changed dramatically) for a change or modification of State Bar membership. To my knowledge, no one has filed such a petition.

As with the WisTAF assessment, numerous avenues exist for objecting State Bar members to work within the State Bar for change. Again, any State Bar member can seek a referendum of the membership by collecting the signatures of 1,000 members on a petition. As with the WisTAF assessment, to date, no State Bar member who opposes mandatory bar membership has chosen to seek a referendum of other State Bar members.

Given the entire range of options available to those State Bar members who feel aggrieved by the current mandatory bar membership, it is overkill to seek to amend the state constitution for the benefit of those object to mandatory State Bar membership.

TESTIMONY ON AJR-31
A. JOHN VOELKER, DIRECTOR OF STATE COURTS
BEFORE THE ASSEMBLY COMMITTEE ON ELECTIONS AND CONSTITUTIONAL LAW
MARCH 22, 2007

Thank you for the opportunity to address the state court system's concerns about Assembly Joint Resolution 31.

A dispute over a membership in a professional association is no reason to alter the state Constitution.

The Constitution grants the Supreme Court superintending and administrative authority over the courts.

Members of the legal profession are officers of the court, and by their admission to the bar, they are obligated to help the Court with the proper and efficient administration of justice.

The idea of a mandatory bar has been disputed and litigated in Wisconsin and in federal courts for years. But the dispute has remained where it belongs – in the courts.

Former State Bar President David Saicheck wrote in 1997 that through the course of these litigations, not only has the state Bar prevailed, but it has developed procedures to accommodate the rights of dissenters while still vigorously pursuing the primary professional goals which justify the imposition of required membership.

A 1958 opinion of the Wisconsin Supreme Court concluded that the practice of law in the broad sense is so tightly linked with the exercise of judicial authority that the court should continue to exercise its supervisory control of the practice of law.[1]

The U.S. Supreme Court has held that a unified bar with limited functions funded by mandatory dues does not violate constitutional rights.

Does it make sense for Wisconsin to have a constitutional amendment to settle a dispute that's already been addressed in the nation's highest court?

In fact, the Wisconsin Supreme Court in the past put a challenge to the mandatory bar here on hold until the U.S. Supreme Court settled the matter.

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[1] In re Integration of Bar, 5 Wis. 2d 618 (1958)

In the meantime, "the U.S. Supreme Court held that mandatory dues of the members of a unified bar association may constitutionally be used to fund activities germane to the identified state interests in regulating the legal profession and improving the quality of legal services."

The state Supreme Court integrated the State Bar in 1956. The requirement remained in place until May 6, 1988, when enforcement was suspended until federal courts handled the matter.

In 1992, after other disputes were settled, the Wisconsin Supreme Court issued an opinion re-instating the mandatory bar.

> The opinion concluded, and I quote:
>
> "Members of the legal profession have a duty to promote the public interest, as well as the interests of their individual clients. A significant aspect of the public's interest is the efficient and effective administration of justice. It is necessary that lawyers join in a common effort to carry out this duty, for lawyers acting individually or in discrete groups might lack the commitment and resources to effectively address more than a portion of their professional responsibilities. Acting as one, however, the members of the legal profession constitute a powerful force to further the improvement of the legal system, its laws, its courts and practitioners."[2]

It's important to note that this was the result of a request of the State Bar, not an initiative of the Supreme Court itself. Nonetheless, the Court has long held regulatory authority over those who practice law in the state.

This dispute among lawyers is no reason to ignore the state Constitution and state and federal court decisions.

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[2] In the matter of State Bar of Wisconsin, 169 Wis. 2d 21, 485 N.W. 2d 225 (1992)

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March 21, 2007

To: Assembly Committee on Elections and Constitutional Law

Re: Opposition to AJR 30 and AJR 31

The League of Women Voters of Wisconsin is opposed to AJR 30 and AJR 31 as inappropriate subjects for constitutional action.

In Wisconsin, the Supreme Court by rule requires all practicing attorneys to belong to the State Bar of Wisconsin and pay bar dues. A portion of those bar dues is used to provide legal services to the indigent.

Practicing attorneys must complete thirty hours of continuing legal education in specified time periods and the Bar Association is the venue for much of that legal education. This continuing education requirement, as it does in other licensed professions, provides a level of quality assurance for consumers.

The League has long supported the public defender program in the criminal justice system but there are many other legal issues confronting the poor. The portion of the bar dues going to support legal services to indigents must be viewed as an appropriate expenditure, since surely attorneys understand the importance of quality legal representation, especially for those who have no resources.

The citizens of the state of Wisconsin would not be well served by enactment of AJR 30 and AJR 31.